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VINSON & ELKINS, L.L.P.
FIRST CITY TOWER
1001 FANNIN STREET, SUITE 2500
HOUSTON, TX 77002-6760

EXAMINER	
RUNNING, RACHEL A	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/821,109
Filing Date: April 08, 2004
Appellant(s): CAFARO ET AL.

R. Floyd Walker
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 21 July 2008 appealing from the Office action mailed 18 December 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0189128	NAKAGAWA ET AL.	12-2002
2003/0052115	LEUNG	03-2003
2005/0056631	CHA	03-2005

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 4, 7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leung (United States Patent Publication No. 2003/0052115) in view of Nakagawa et al. (United States Patent Publication No. 2002/0189128).

Leung discloses a hair styling device that heats hair by conduction of heat from a heated surface (see para 0028) and includes a fan and a motor. The device further comprises a handle portion 100, a barrel portion 300 adjoining the handle portion, a heater 216 contained in the barrel portion, a flipper303 mechanically linked to a flipper

actuator, air inlets in the housing, an air guide 119 for directing air into the barrel; ad outlet holes 307 formed in the barrel. Leung does not disclose the ion generator. Nakagawa et al. disclose a hair styling appliance having an ion generator system 62. The ion generator system comprises an anode pin and a cathode ring. The device further includes an indicator LED 9 for the ion generator. It would have been obvious to one skilled in the art to provide the curling iron of Leung with an ion generator system in view of Nakagawa et al. in order to treat the hair and make it smooth and silky.

Claims 1, 3-6 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cha (United States Patent Publication No. 2005/0056631) in view of Nakagawa et al.

Cha discloses a flat straightener comprising a housing, heating plates 5, an ion generator comprising an array of electrodes, and an airflow system comprising an air guide, air inlets and air outlets 13. Cha does not disclose the motor and the fan. Nakagawa et al. disclose a hair styling appliance having an ion generator system 62 and a motor and fan. The ion generator system comprises an anode pin and a cathode ring. The device further includes an indicator LED 9 for the ion generator. It would have been obvious to one skilled in the art to provide the straightener of Cha with motor and fan in view of Nakagawa et al. in order to provide better flow of air and ions.

(10) Response to Argument

With regards to Appellant's argument regarding the rejection of claims 1, 2, 4, 7, 9, and 10 based on Leung in view of Nakagawa et al. that Leung does not disclose a

hair styling device that heats the hair of a user by conduction of heat from a heated surface to the hair of a user. Leung does disclose a hair styling device that heats the hair of a user by conduction of heat from a heated surface to the hair of a user, Leung states that the barrel portion 300 has "a cavity and a heatable surface with one or more vents" (see paragraph 0015), therefore, the surface of the barrel is heated which meets applicant's limitation of a styling device that heats the hair of a user by conduction of heat from a heated surface.

With regards to Appellant's argument regarding the rejection of claims 1, 3-6, and 11-13 based on Cha in view of Nakagawa et al. appellant argues that Cha is not available as prior art based on the declaration filed April 18, 2008. The declaration filed on April 18, 2008 under 37 CFR 1.131 has been considered but is ineffective to overcome the Cha reference. The declaration is ineffective since a declaration by the inventor to the effect that his or her invention was reduced to practice prior to the reference date, without a statement of facts demonstration the correctness of this concludes is insufficient to satisfy 37 CFR 1.131. For instance Cha is used to show a flat straightener, however, the original drawings submitted by applicant in the declaration does not show the flat straightener, it is noted that an accompanying exhibit need not support all the claimed limitations, provided that any missing limitation is supported by the declaration itself, in this instance case the declaration does not support the missing limitation. Ex parte Ovshinsky, 10 USPQ2d 1075 (BD. Pat. App. & Inter. 1989). See MPEP 715.04-715.05. Further where the claim under rejection recites a species (i.e. the flat straightener) and the reference (i.e. Cha) or activity

discloses the claimed species, the rejection can be overcome under 37 CFR 1.131 directly by showing prior completion of the claimed species or indirectly by showing of prior completion of a different species coupled with a showing that the claimed species would have been an obvious modification of the species completed by applicant. See In re Spiller, 500 F.2d 1170, 182 USPQ 614 (CCPA 1974). In this instance case the declaration fails to show that the claimed species would have been an obvious modification of the species completed by applicant. See MPEP 715.03 I A.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Rachel A. Running

/Rachel A. Running/
Examiner, Art Unit 3732

Conferees:

Cris Rodriguez

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732

Marc Jimenez

/Marc Jimenez/

TQAS TC 3700